

REMARKS

Applicants acknowledge receipt of a Final Office Action dated July 7, 2009. In this response, Applicants have amended claims 1- 3, have added claims 21-22, and have canceled claims 4, 19 and 20. Following entry of this amendment, claims 1-3, 5-18, and 21-22 are now pending in this application.

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Rejection Under 35 U.S.C. §102

On page 2 of the Office Action, the Office has rejected claims 1-8, 11-14, and 16-20 under 35 U.S.C. §102(a) as allegedly being anticipated U.S. Publication No. 2003/0173069 to Nitta *et al.* (hereafter “Nitta”). Applicants respectfully traverse this rejection for at least the reasons set forth below.

As a preliminary matter, independent claims 19 and 20 have been cancelled.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See generally MPEP § 2131.

Nitta fails to disclose, among other things, a heat exchanger assembly comprising a holder that includes a laterally protruding holding arm, “wherein the flange has at least one holding attachment with a holding and guiding groove, and wherein the holding and guiding groove is configured to receive the holding arm,” as recited in claim 1.

On page 6 of the Office Action, the Office states that Nitta discloses “. . . the holder (200) being secured to the manifold and including a laterally protruding holding arm (210 or the unnumbered upwardly protruding tabs), the flange (105) having at least one holding attachment with a holding and guiding groove (at the lower surface of (105), the groove being configured to receive the holding arm (the upwardly protruding tabs)...the flange (105) has two holding attachments (210). . .” (emphasis added).

Applicants submit that claim 1 recites, among other things, that i) “the holder and flange are separate pieces,” ii) “the at least one holder includes a laterally protruding holding arm” and iii) “the flange has at least one holding attachment.” The Office relies on manifold

block 105 of Nitta as the flange of the present claims, and relies on fitting clasp 200 of Nitta as the holder of the present claims. The Office further relies on legs 210 of Nitta to be the laterally protruding holding arm of the holder and the at least one holding attachment of the present claims. Applicants submit that the Office's statements are inaccurate because legs 210 of Nitta cannot simultaneously be part of both the manifold block and fitting clasp. Consequently, since the Office states that "a laterally protruding holding arm (210 or the unnumbered upwardly protruding tabs)" (emphasis added), the conflict is solved by considering that the Office relies on "the unnumbered upwardly protruding tabs", presumably somewhere on Fig. 3 of Nitta, to be the laterally protruding arm of the holder in the claimed invention. However, after careful review of Nitta, Applicants cannot find any disclosure at all of "the unnumbered upwardly protruding tabs," "upwardly protruding tabs", "protruding tabs", or even "tabs." Furthermore, Nitta does not disclose any features of the lower surface of 105 to provide support for an alleged groove being configured to receive upwardly protruding tabs. Regardless, whether or not such features appear in the drawings, they are not discussed at all in the specification as to even convey their form or function.. In such a case, applying an arbitrary interpretation to the form, function, properties or characteristics of features allegedly shown in drawings imports with it flawed and speculative probabilities or possibilities that must, by definition, fall short of proving inherency. Thus, Applicants submit that the Office has inadvertently, but improperly, imported features to Nitta which are not explicitly or implicitly disclosed by that reference. Furthermore, even if one were to rely upon inherency to support the Office's statement, a basis in fact and/or technical reasoning to reasonably support the determination that an allegedly inherent characteristic necessarily flows from the disclosure of the prior art must be provided. See MPEP § 2112, Part IV, *citing Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). **Any inherent disclosure in a reference may not be established by probabilities or possibilities.** See MPEP § 2112, Part IV, *citing In re Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

For at least the reasons discussed above, Nitta does not anticipate claims 1-8, 11-14, and 16-20 because Nitta does not disclose all of the features of claim 1-8, 11-14, and 16-20. In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection under § 102.

Rejections Under 35 U.S.C. § 103

Claims 9-10

On pages 3-4 of the Office Action, the Office has rejected claims 9-10 as allegedly being unpatentable over Nitta.

As described above, Nitta fails to disclose, teach or suggest all of the features of independent claim 1 from which claims 9-10 depend. Thus Nitta does not render claims 9-10 to be unpatentable. Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 15

On page 4 of the Office Action, the Office has rejected claim 15 as allegedly being unpatentable over Nitta in view of EP 1158261 to Sasaki (hereafter “Sasaki”). Applicants respectfully traverse the rejection.

As outlined above, with respect to the rejection of independent claim 1, Nitta fails to disclose, teach or suggest all of the features of independent claim 1. With respect to the rejection under §103 of dependent claim 15, the Office has combined Nitta with Sasaki. However, Sasaki fails to cure the fundamental deficiencies in Nitta as outlined above. For example, Sasaki fails to disclose, among other things, a heat exchanger assembly comprising a holder that includes a laterally protruding holding arm, “wherein the flange has at least one holding attachment with a holding and guiding groove, and wherein the holding and guiding groove is configured to receive the holding arm.” Thus, Applicants submit that claim 15, which ultimately depends from independent claim 1, is non-obvious at least by virtue of its dependency from claim 1. Reconsideration and withdrawal of the current rejection are respectfully requested.

Amendments

Claim 1 has been amended to include features of claims 3 and 4. With this amendment, Applicants provisionally surrender subject matter taught by Nitta, that is, a manifold block 105 being secured to a condenser via two clasps 200 and 205, in the manner of clasping and geometric arrangement shown in Fig. 3 of Nitta.

Claim 1 has been further amended to remove “fixing”, which is believed to broaden the claims. Applicants reserve the right to reverse these amendments where such circumstance may warrant future amendment.

Newly Added Claims

In this response, Applicants have added new claims 21 and 22. New dependent claim 21 recites, among other things, that the heat exchanger assembly a third and fourth of said at least four openings are each closed by a plug. Additionally, new dependent claim 22 recites, among other things, that the flange further comprises at least one securing lug arranged adjacent each of the third and fourth openings. Claims 21 and 22 each ultimately depend from claim 1 and are allowable over the cited references for at least those reasons discussed above and for their respective additional recitations.

CONCLUSION

Applicants submit that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date November 9, 2009

By 

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 945-6162
Facsimile: (202) 672-5399

Pavan K. Agarwal
Attorney for Applicant
Registration No. 40,888